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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 860

ILLINOIS COMMERCE COMMISSION,
Appellant,

vs.

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY.

APPEAL FROM THE SUPREME COURT OF THE STATE OF ILLINOIS

STATEMENT OPPOSING JURISDICTION

C. W. KROHL,
ELDON MARTIN,
JAMES A. GILLEN,
Counsel for Appellee.

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Appellee

STATEMENT OF APPELLEE MAKING AGAINST THE JURISDICTION OF THE SUPREME COURT OF THE UNITED STATES ASSERTED BY APPELLANT.

Appellee, Chicago, Burlington & Quincy Railroad Company, presents this statement disclosing matters and grounds making against the jurisdiction of the Supreme Court of the United States pursuant to paragraph 3 of Rule 12 of this Court.

I

Decision of Supreme Court of Illinois Did Not Subordinate Any Law of the United States to the Illinois Public Utilities Act.

Any consideration of appellant's attempt to invoke the jurisdiction of this Court based upon the assertion that the Illinois Public Utilities Act as construed and interpreted

by the Supreme Court of Illinois is repugnant to the Emergency Price Control Act, requires a brief review of the facts in order that the case may be viewed in its proper perspective.

By appropriate tariffs filed with the Illinois Commerce Commission in February, 1942, to become effective in March 1942, appellee proposed to increase by ten per cent its intrastate commutation passenger fares applicable between Chicago and Aurora, Illinois. This increase in commutation fares was proposed in order to conform with the same relative increase in one-way and round-trip fares being made effective at the same time under authority of an order issued by the Interstate Commerce Commission in its docket *Ex Parte No. 148*. The Illinois Commerce Commission suspended the proposed commutation fares and ordered an investigation instituted to determine the propriety of the new fares. The investigation was concluded and the case taken under advisement by the Commission in *June, 1942*. In *December, 1942* appellee was served with an order of the Commission finding that the proposed fares were unreasonable and ordering the tariffs cancelled. Appellee complied with that order. In the meantime, on *October 2, 1942*, the amendment to the Emergency Price Control Act referred to by appellant in its jurisdictional statement, was passed. In *January, 1943*, appellee applied to the Commission for a rehearing and at the same time served notice upon the Price Administrator, which notice contained a consent to his intervention in the proceedings in compliance with the requirements of the Emergency Price Control Act. The petition for rehearing was denied and, in apt time, appellee filed its appeal in the Circuit Court of Cook County, Illinois. At that time the Price Administrator was again notified of the pendency of the proceeding and the second notice also contained appellee's consent to his

intervention. At no time did the Price Administrator intervene, or seek to intervene, in the proceedings. Appellant's assertion in its jurisdictional statement that the Price Administrator sought to intervene in the Supreme Court of Illinois as *amicus curiae*, is a misstatement—probably made through inadvertence. The Price Administrator has never sought to intervene in this case either as *amicus curiae* or in any other capacity.

Appellant's claim to jurisdiction appears to be based principally upon the fact that it was not "made to appear of record" that appellee had served the required notice upon the Price Administrator. The simple answer is that the record in this proceeding was closed four months before the Act requiring such notice was passed. But whether or not the Illinois Commerce Commission was entitled to receive a copy of the notice served upon the Price Administrator does not present a substantial Federal question.

It is important to note that the order of the Commission which was the subject matter of the appeal to the Supreme Court of Illinois did not raise any question of the effect of the Price Control Act upon the jurisdiction of the Commission. That question was raised for the first time in appellant's brief in the Supreme Court.

The contention that there is a question of whether the Price Control Act deprived the Illinois Commerce Commission of jurisdiction to permit the increases in rates proposed by appellee is without merit. That Act did not have the effect of nullifying established procedure under the Illinois Public Utilities Act. The Supreme Court of Illinois held that the Price Control Act did not affect the jurisdiction of the Illinois Commerce Commission and this holding was based, as indicated in the opinion, upon the decision of this Court in *Vinson* v. *Washington Gas Light Co.*, 321

U. S. 489. In that case, in speaking of the effect of the Price Control Act upon the jurisdiction of regulatory commissions, this Court said (page 499):

> "We are asked then, not only to revise the views expressed in *Davies Warehouse Co.* v. *Bowles, supra,* as to the scope of the Acts, but to infer from a general expression of congressional policy, the limitation of existing powers conferred by law on regulatory commissions throughout the nation, both state and federal, and the endowment of a different federal agency with new and superior rights and powers. This we are unable to do."

Thus, even if it could be said that any Federal question has been raised in this proceeding on that point such question has already been decided by this Court. As a consequence there is no basis for the claim that the Illinois Public Utilities Act is repugnant to any law of the United States.

II

The Decision of the Supreme Court of Illinois Does Not Deprive the Citizens of Illinois of Their Property Without Due Process of Law.

In effect, appellant's contention is that the Supreme Court of Illinois, by permitting the increase in rates, is depriving the citizens of Illinois of their property without due process of law in violation of the Constitution of the United States. This contention borders on the frivolous. As the Supreme Court of Illinois pointed out in its opinion, appellee is not seeking a return on any investment. It is merely seeking an increase in fares in order to reduce operating deficits on a particular class of traffic. Substantial evidence was introduced by appellee showing the losses sustained in transporting suburban passenger traffic.

No one appeared in opposition to the proposed fares except the Attorney General but, in this particular proceeding, he does not represent the citizens of Illinois. He represents the Illinois Commerce Commission pursuant to statutory authorization. Section 72a, Chapter 111-⅔, Illinois Revised Statutes, 1943, reads as follows:

> "In all appeals from the orders and decisions of the Commission, it shall be the duty of the Attorney General to represent the Commission and defend its orders and decisions."

The Illinois Commerce Commission is in no position to contend that under the Constitution of the United States the property of some unknown person or persons is being taken without due process. The only one who can raise that point is some person who might be directly affected. *Tyler* v. *Judges of Court of Registration*, 179 U. S. 405; *Braxton County Court* v. *West Virginia*, 208 U. S. 192.

Any citizen who feels he has been injured by the payment of an excessive rate has a complete remedy under the Illinois Public Utilities Act. Section 76, Chapter 111-⅔, Illinois Revised Statutes, 1943, provides the procedure for obtaining reparation in the case where a public utility charges an excessive or unjustly discriminatory amount for its services, with interest at the legal rate from the date of payment of such excessive or unjustly discriminatory amount.

The proceedings under which appellee would put the increased fares into effect are in accordance with those rules and principles which have been established in our system of jurisprudence for the protection and enforcement of private rights. When proceedings are conducted in accordance with those rules and principles, as this one was, then due process has been observed. *Endicott-Johnson Corp.* v. *Encyclopedia Press*, 266 U. S. 285, 288.

III

The Decision of the Supreme Court of Illinois Rests Upon Adequate Non-Federal Grounds

The principal grounds upon which the Supreme Court of Illinois set aside the order of the Illinois Commerce Commission will be found in that portion of its opinion reading as follows:

> "The orders in the four cases here under consideration do not comply with the mandatory requirements of section 65 of the Public Utilities Act. They do not contain any findings as required by that section. Said orders are void for the further reason that they are not based upon the evidence and are predicated upon matters wholly outside the evidence offered before the commission. They are in form merely arguments and conclusions based upon assumptions and speculations and are not supported by the evidence in the records. The orders are arbitrary, unreasonable and unlawful, and cannot be sustained."

The Illinois Commerce Commission was created by and receives its authority from the Illinois Public Utilities Act and in all its actions it must comply with the mandatory provisions of that Act. In applying that statute to the order of the Commission under consideration the Supreme Court of Illinois found that the Commission had exceeded its authority and that its order was void. That action of the Supreme Court of Illinois involved no Federal question and constitutes sufficient grounds for this Court to decline to assume jurisdiction.

In *Lynch* v. *New York, ex rel., Pierson,* 293 U. S. 52, this Court held that where the judgment of the State court rests on two grounds, one involving a Federal question, the other not, and the ground independent of the Federal question is

sufficient in itself to sustain it, this Court will not take jurisdiction.

The decision of the Supreme Court of Illinois rests upon grounds other than those involving a Federal question and they are sufficient in themselves to sustain it.

Conclusion

For the reasons herein stated it is respectfully submitted that an appeal does not lie from the decision of the Supreme Court of Illinois to this Court.

Respectfully submitted,

C. W. KROHL,
ELDON MARTIN,
JAMES A. GILLEN,
Attorneys for Appellee.
547 W. Jackson Blvd.,
Chicago (6), Illinois.